REMARKS

Claims 1, 3, 4, 6-8, and 11-13 are pending in the present application. Claim 29 has been canceled without prejudice. Claim 1 has been amended to particularly pointing out and distinctly claim the subject matter which the applicant regard as the invention. In particular, claim 1 has been amended to explicitly state that the biologically active agent is loaded into the voids of the porous material and that such agent is released from the voids upon insertion of the stent into the body. The amendments are fully supported by the originally-filed specification and original claims of the patent application and do not introduce new matter. Reconsideration of the present application in view of the amendments and the following remarks are respectfully requested.

Claims 1, 3, 4, 6-8, 11-13, and 29 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,843,172 to Yan ("Yan") in view of U.S. Patent No. 5,205,921 to Shirkanzadeh ("Shirkanzadeh"). Applicant respectfully disagree with this rejection.

The Examiner acknowledges that Yan "fails to specifically teach . . . an electrodeposition method for loading the stent with the bioactive agent." (Office Action at page 2). To remedy the deficiencies of Yan, the Examiner relies on Shirkanzadeh. However, there is no motivation to combine the teachings of Yan and Shirkanzadeh since each of these references discloses medical devices that provide different results for the bioactive agent of the device when the device is inserted or implanted.

More specifically, Yan teaches the loading of a medication into the pores of a metallic vascular stent. When the stent is implanted or inserted, the medication is released into the vascular tissue or blood vessel. (*See* abstract).

In contrast, Shirkanzadeh teaches a method of applying a bioactive agent to its orthopedic device as an adherent film that is used to improve the effectiveness and biocompatibility of the device by stimulating bone in-growth or by even bonding chemically to the bone structure after implantation or insertion of the device (Col. 1, lines 15-19; col. 3, lines 35-39). In other words, Shirkanzadeh teaches a method for making a orthopedic device having a bioactive agent in which the bioactive agent of the device is not releasable from the device after implantation or insertion so that the bioactive agent can adhere to the device and promote bone growth.

In view of Yan's teaching that the medication or bioactive agent of its vascular stent is releasable upon implantation and Shirkanzadeh's contrasting teaching of a method for forming an orthopedic device in which a bioactive agent is not releasable from the device after implantation, Applicant submits that the skilled artisan would not be motivated to combine the teachings of Yan and Shirkanzadeh. Since these two references teach that the bioactive agent in their respective medical devices have opposite results when each device is implanted or inserted, *i.e.* in one the bioactive agent is released from the device after implantation, while in the other the bioactive agent adheres to the device after implantation, the skilled artisan would not be motivated to combine the teachings of Yan and Shirkanzadeh. In fact, by teaching that its method leads to an orthopedic device in which the bioactive agent is not released from the device after implantation, Shirkanzadeh teaches away from the claimed invention in which the biologically active agent is released from the voids after insertion of the stent.

In addition, on pages 4-5 of the Office Action, the Examiner appears to suggest that there is motivation to combine Yan and Skirkanzadeh since "Yan's stent loaded with bio-agents would be releasable when applied by the electrodeposition method of Skirkanzadeh because "all coatings are releasable (able to be releasesd), including 'at least some' of otherwise adherent coatings." However, the Examiner does not point to any support that all coatings, including those of Skirkanzadeh, would be releasable. Applicant respectfully submits that the motivation to combine references must be provided in the references themselves. Therefore, Applicant requests that the Examiner point to the portions of Yan and Shirkanzadeh that the Examiner's assertion in the Office Action. To the extent that this assertion is based on facts within the Examiner's personal knowledge, Applicant request that the Examiner provide an affidavit pursuant to the provisions of 37 C.F.R. § 1.104(d)(2).

Furthermore, on page 5 of the Office Action, in an apparent attempt to draw similarities between Yan and Shirkanzadeh, the Examiner states that even the coatings of Yan are adherent prior to implantation. Since Yan teaches that the bioactive agent in its stent is releasable when the stent is implanted and Shirkanzadeh teaches that the bioactive agent of its device is not releasable after implantation, that Yan's coating is adherent before implantation appears to be irrelevant and does not provide motivation to combine the teachings of Yan and Skirkanzadeh.

Accordingly, it is believed that the pending claims are patentable over Yan and Shirkanzadeh, whether taken alone or in combination. Thus, withdrawal of this rejection is respectfully requested.

CONCLUSION

In view of the above remarks, it is believed that the rejections have been overcome and that the present application is in condition for allowance. Should the Examiner not agree with Applicant's position, then a personal or telephonic interview is respectfully requested to discuss any remaining issues and expedite the eventual allowance of the application.

Respectfully submitted,

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